

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-193334

DATE: January 19, 1979

MATTER OF: Piconics Incorporated *DLG00671*

[Protest Concerning Award of Second-Tier Subcontract]
DIGEST:

1. Potential second-tier subcontractor's protest concerning contract award by first-tier subcontractor will not be considered on merits because protest does not fall within any of the limited bases under which GAO will consider protests against the award of subcontracts.
2. Fraud or bad faith on part of Government in approving subcontract award is not indicated by contractor's alleged bad faith Buy American Act certification.

Piconics Incorporated (Piconics) protests the award of a second-tier subcontract by TRW, Inc. (TRW) to Vanguard Electronics Company (Vanguard), on the grounds *DLG00670* that Vanguard intends to furnish materials manufactured at a Mexico facility in violation of the Buy American Act contract provisions set forth in Defense Acquisition Regulation (DAR) 7-104.3 (1976 ed). Boeing Aerospace Company (Boeing) is the prime contractor under Department of the Air Force (Air Force) contract F04701-78-C-0040.

In Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166, we held that we would consider protests concerning the award of subcontracts only in certain instances. Basically, these circumstances fall into five categories: (1) where the prime contractor is acting as a purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of causing or controlling the rejection or selection of a potential subcontractor, or has significantly limited subcontract sources; (3) where fraud or bad faith in Government approval of the subcontract award or proposed award is shown; (4) where the subcontract award is "for" an agency of the Federal Government;

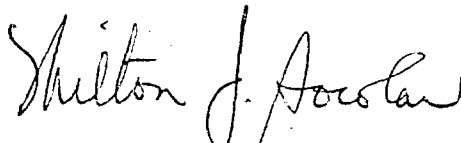
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(5) where the question concerning the award of a subcontract is submitted by an official of a Federal agency entitled to advance decisions from our Office.

So as to bring this case within the Optimum Systems standard of review, Piconics alleges "fraud or bad faith in Government approval of the subcontract award." As the basis for this allegation, however, Piconics questions whether Vanguard "is in compliance with the flow down requirements" of the Buy American clause, supra, and whether "Vanguard's contractual certifications as to compliance therewith is a good faith representation." Obviously, Vanguard's actions with respect to the Buy American Act cannot be categorized as Government "fraud or bad faith." Thus, even if the complained of award was approved by the Government as alleged by Piconics, there is no evidence of, indeed not even a meaningful allegation of, fraud or bad faith by the Government.

Consequently, we find no basis to review the subcontract award by TRW.



Milton J. Socolar
General Counsel